

111TH CONGRESS
2D SESSION

S. 3490

To clarify the rights and responsibilities of Federal entities in the spectrum relocation process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2010

Mr. WARNER (for himself and Mr. WICKER) introduced the following bill;
which was read twice and referred to the Committee on Commerce,
Science, and Transportation

A BILL

To clarify the rights and responsibilities of Federal entities
in the spectrum relocation process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Spectrum Relocation
5 Improvement Act of 2010”.

6 **SEC. 2. RIGHTS AND RESPONSIBILITIES OF FEDERAL ENTI-**
7 **TIES IN THE SPECTRUM RELOCATION PROC-**
8 **ESS.**

9 (a) ELIGIBLE FEDERAL ENTITIES.—Section
10 113(g)(1) of the National Telecommunications and Infor-

1 mation Administration Organization Act (47 U.S.C.
2 923(g)(1)) is amended to read as follows:

3 “(1) ELIGIBLE FEDERAL ENTITIES.—Any Fed-
4 eral entity, as defined in subsection (i), that operates
5 a Federal Government station assigned to a band of
6 eligible frequencies, as described in paragraph (2),
7 and that incurs relocation costs because of the re-
8 allocation of frequencies from Federal use to non-
9 Federal use shall receive payment for such costs
10 from the Spectrum Relocation Fund if the Federal
11 entity is found by the Office of Management and
12 Budget (in this section referred to as ‘OMB’) to
13 comply with the requirements of this section and
14 section 118. For purposes of this paragraph, Fed-
15 eral power agencies exempted under subsection
16 (c)(4) that choose to relocate from the frequencies
17 identified for reallocation pursuant to subsection (a)
18 are eligible to receive payment under this para-
19 graph.”.

20 (b) PUBLIC INFORMATION ON RELOCATION PROC-
21 ESS.—Section 113(g) of the National Telecommunications
22 and Information Administration Organization Act (47
23 U.S.C. 923(g)) is amended—

24 (1) by redesignating paragraph (6) as para-
25 graph (7); and

(2) by inserting after paragraph (5) the following new paragraph:

“(6) PUBLIC NOTICE OF RELOCATION PLANS.—

“(A) Not later than 90 days after the date on which the NTIA, on behalf of eligible Federal entities and after review by OMB, notifies the Commission of estimated relocation costs and timelines for such relocation as required by paragraph (4)(A), NTIA shall post on its Web site detailed transition plans from each of the eligible Federal entities. Each Federal entity’s transition plan shall provide the public with the following information about its spectrum relocation requirements:

“(i) Current use of the spectrum.

“(ii) Geographic location of the Federal entities’ facilities or systems.

“(iii) Frequency bands used by such facilities or systems, described by geographic location.

“(iv) The steps to be taken by the Federal entity to relocate its current spectrum uses from the eligible frequencies, detailed according to timelines for specific geographic locations in sufficient detail to

1 indicate when use of such frequencies at
2 specific locations will be shared between
3 the Federal entity and the commercial li-
4 censee.

5 “(v) The specific interactions between
6 eligible Federal entities and NTIA needed
7 to implement the transition plan.

8 “(vi) The name of the director, offi-
9 cer, or employee responsible for the Fed-
10 eral entity’s relocation efforts and who is
11 authorized to meet and negotiate with
12 commercial licensees regarding the reloca-
13 tion process.

14 “(vii) The Federal entity’s plans and
15 timeline for using relocation funds received
16 from the Spectrum Relocation Fund.

17 “(viii) The Federal entity’s plans and
18 timeline for procuring new equipment and
19 additional personnel needed for the reloca-
20 tion.

21 “(ix) The Federal entity’s plans and
22 timeline for field-testing and deploying new
23 equipment needed in the relocation.

1 “(x) The Federal entity’s plans and
2 timeline for hiring and relying on contract
3 personnel, if any.

4 “(xi) Risk factors in the relocation
5 process that could affect the Federal enti-
6 ty’s fulfillment of its transition plan.

7 “(B) To be eligible to receive payment for
8 relocation costs from the Spectrum Relocation
9 Fund—

10 “(i) Federal entities shall make the
11 transition plans described in this sub-
12 section available to NTIA at least 90 days
13 prior to the date that NTIA shall make
14 such plans publicly available on its Web
15 site pursuant to subparagraph (A), in a
16 common format to be specified by NTIA
17 after public input; and

18 “(ii) each transition plan shall be
19 evaluated by a standing 3-member tech-
20 nical panel (in this section referred to as
21 the ‘Technical Panel’), which shall report
22 to NTIA and to the Federal entity, within
23 30 days after the plan’s submission to
24 NTIA, on the sufficiency of the plan under
25 this paragraph, including whether the re-

1 quired public information is included and
2 whether proposed timelines and estimated
3 relocation costs, including costs proposed
4 for expanding the capabilities of a Federal
5 system in connection with relocation, are
6 reasonable.

7 “(C) The Director of OMB, the Adminis-
8 trator of NTIA, in consultation with the af-
9 fected Federal entities, and the Chairman of
10 the Commission shall each appoint one member
11 to the Technical Panel, and each such member
12 shall be a radio engineer or technical expert.
13 NTIA shall adopt regulations to govern the
14 workings of the Technical Panel after public no-
15 tice and comment, subject to OMB approval,
16 and the members of the Technical Panel shall
17 be appointed, within 180 days of the date of en-
18 actment of the Spectrum Relocation Improve-
19 ment Act of 2010. No person shall serve as a
20 member of the Technical Panel for more than
21 18 months.

22 “(D) If any of the information otherwise
23 required by this paragraph is ‘classified infor-
24 mation’, as that term is defined in section
25 798(b) of title 18, United States Code, the Fed-

1 eral entity’s transition plan shall explain the ex-
 2 clusion of any such information as specifically
 3 as possible, shall make all relevant non-classi-
 4 fied information available in its transition plan,
 5 and shall discuss as a risk factor the extent of
 6 the classified information and the effect on the
 7 relocation process of the classified information.

8 “(E) NTIA, in consultation with OMB and
 9 the Department of Defense, shall adopt regula-
 10 tions within 180 days of the date of enactment
 11 the Spectrum Relocation Improvement Act of
 12 2010 to ensure information released publicly for
 13 the purpose of this paragraph contains no sen-
 14 sitive or classified information.”.

15 (c) SHARING AND COORDINATION OF SPECTRUM BE-
 16 TWEEN COMMERCIAL LICENSEES AND FEDERAL ENTI-
 17 TIES DURING RELOCATION TRANSITION.—Section 118 of
 18 the National Telecommunications and Information Ad-
 19 ministration Organization Act (47 U.S.C. 928) is amend-
 20 ed by adding at the end the following new subsections:

21 “(f) ELIGIBILITY FOR PAYMENT OF RELOCATION
 22 COSTS.—

23 “(1) SPECTRUM SHARING.—To be eligible to re-
 24 ceive payment for relocation costs from the Spec-
 25 trum Relocation Fund, a Federal entity shall—

1 “(A) in its transition plan for relocating its
2 current spectrum uses, provide—

3 “(i) to the fullest extent possible, for
4 sharing and coordination of eligible fre-
5 quencies with commercial licensees, includ-
6 ing reasonable accommodation by the Fed-
7 eral entity for the use of eligible fre-
8 quencies by the commercial licensee during
9 the period that the Federal entity is relo-
10 cating its spectrum uses (in this subsection
11 referred to as the ‘transition period’); and

12 “(ii) a presumption that commercial
13 licensees shall be able to use eligible fre-
14 quencies during the transition period in ge-
15 ographic areas where the Federal entity
16 does not utilize those frequencies;

17 “(B) during the transition period, make
18 itself available, within 30 days after a written
19 request, for negotiation and discussion with
20 commercial licensees; and

21 “(C) during the transition period, make
22 available to a commercial licensee with appro-
23 priate security clearances any ‘classified infor-
24 mation’ as that term is defined in section
25 798(b) of title 18, United States Code, regard-

1 ing the relocation process, on a need-to-know
2 basis, to assist the commercial licensee in the
3 relocation process with that Federal entity or
4 other Federal entities.

5 “(2) TIMELY AND SUCCESSFUL COMPLETION
6 OF RELOCATION.—In addition to the conditions of
7 paragraph (1), to be eligible to receive payment for
8 relocation costs from the Spectrum Relocation Fund,
9 a Federal entity—

10 “(A) shall complete the relocation of its
11 current spectrum uses not later than 1 year
12 after the date upon which funds are transferred
13 to the entity to fund the relocation;

14 “(B) may complete the relocation of its
15 current spectrum use at a time period different
16 that required under subparagraph (A), if prior
17 to the date the Technical Panel (as described in
18 section 113(g)(6)(C)) is required to post pub-
19 licly the Federal entity’s transition plan, the
20 Federal entity receives written approval from
21 the Office of Management and Budget (in this
22 section referred to as ‘OMB’), with the advice
23 of the Technical Panel; and

24 “(C) shall make available to NTIA, not
25 later than 15 days prior to the date that is the

1 halfway point of the time period described in
2 subparagraph (A), a complete update of its
3 transition plan, provided that NTIA shall post
4 such update publicly on its Web site not later
5 than the date that is the halfway point of the
6 time period described in subparagraph (A).

7 “(3) Nothing in paragraphs (1) or (2) shall be
8 construed to adversely affect critical communications
9 related to the mission of any Federal entity.

10 “(4) Subject to subsection (d), payments for re-
11 location costs from the Spectrum Relocation Fund
12 shall be made to an eligible Federal entity not later
13 than 30 days after the grant of the first license fol-
14 lowing the close of the auction.

15 “(g) DISPUTE RESOLUTION PROCESS.—

16 “(1) If, during the spectrum relocation process,
17 a dispute arises over the execution, timing, or cost
18 of the Federal entity’s transition plan, either the
19 Federal entity or the affected commercial licensee
20 may seek resolution of the dispute from a 3-member
21 dispute resolution board, consisting of a representa-
22 tive of OMB, NTIA, and the Commission, and
23 chaired by the representative of OMB.

24 “(2) The dispute resolution board shall meet
25 with representatives of the Federal entity involved in

1 the dispute and the commercial licensee together to
2 discuss the dispute. The dispute resolution board
3 may require the parties to make written submissions
4 to it. The dispute resolution board shall rule on any
5 dispute within 30 days after the date that the dis-
6 pute was brought before it.

7 “(3) The dispute resolution board shall be as-
8 sisted by the Technical Panel described in section
9 113(g)(6)(C).

10 “(4) Subject to OMB approval, NTIA shall
11 adopt regulations to govern the working of the dis-
12 pute resolution board and the role of the Technical
13 Panel after public notice and comment within 180
14 days after the date of enactment of the Spectrum
15 Relocation Improvement Act of 2010.

16 “(5) Appeals may be taken from decisions of
17 the dispute resolution board to the United States
18 Court of Appeals for the District of Columbia Cir-
19 cuit by filing a notice of appeal with that court with-
20 in 30 days after the date of such decision. Each
21 party shall bear its own costs and expenses, includ-
22 ing attorneys’ fees, for any litigation to enforce this
23 subsection or any decision rendered under it.”.

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